THE HON'BLE SRI JUSTICE J.CHELAMESWAR
AND

THE HON'BLE SRI JUSTICE M.VENKATESWARA REDDY

WRIT PETITION NO.8519 OF 2006

ORDER: (Per J.Chelameswar,J)

The Writ Petition is filed with a prayer as follows:

> "…to issue an appropriate writ, order or direction more particularly in a nature of Writ of Mandamus declaring the order dated 27.02.2006 in AR-SI No.C/202/2005, passed by the 1st respondent in rejecting the appeal filed by the petitioner at the admission stage as illegal, arbitrary and weight of evidence and consequently set aside the same and further direct him to entertain and dispose of the appeal on merits after affording opportunity of personal hearing to the petitioner …"

The petitioner is a registered dealer within the meaning of the expression under APVAT, carrying on business in sale of tyres. By an order, dated 13.12.2005, the

2nd respondent herein assessed the amount of VAT for the period 2005-2006 at Rs.3,88,868/- and for the year 2005-2006 at Rs.2,16,958/-, in other words a total tax of Rs.6,05,826/- was found to be due from the petitioner. The same assessment order notice also contains a further statement that the above mentioned amounts have in fact, been paid by Challan Nos.295402 and 295403 respectively on 13.12.2005, in other words the entire amount of tax assessed against the petitioner is paid according to the notice of assessment, dated 13.12.2005. However, aggrieved by the assessment, the petitioner preferred an appeal before the

1st respondent herein. We are not concerned with the grounds of appeal. The 1st respondent rejected the appeal on the ground that the petitioner failed to produce the proof of payment of 12.5% of the disputed tax as required under

the Second Proviso appended to Section 31 (1) of the APVAT Act. The said Proviso reads thus:

> "Provided further that the appeal so preferred shall not be admitted by the appellate authority unless the dealer produces proof of payment of tax admitted to be due or of such installments as has been granted, and the proof of payment of twelve and half percent of the difference of the tax assessed by the authority prescribed and the tax admitted by the appellant for the relevant period in respect of which the appeal is preferred."

It is obvious from the proviso that where the assessee admits a part of the tax liability and disputes remaining part of the liability, the assessee preferring an appeal is required to pay 12.5% of the disputed tax in addition to the proof of payment of the admitted tax. Where the entire tax assessed is already paid by the assessee, insistence upon payment of another 12.5%, in our opinion, is a perverse wave reading the proviso. As already noticed, the entire tax assessed is admittedly paid by the petitioner. There cannot be a better demonstration of the ways of which a citizen can be harassed by the tax collectors than this case. We only feel sorry that persons with such perception of law are made the appellate authorities presiding over the destinies of the citizens of this country. We are of the opinion that the officer who signed the rejection of appeal is unfit to discharge any quasi-judicial function. The Registry is directed to communicate this order to the Chief Secretary.

The Writ Petition is allowed and the order, dated 27.02.2006 in AR-Sl No.C/202/2005, passed by the 1st respondent is quashed and the office of the 1st respondent is directed to number the appeal and consider the appeal on merits.

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J.CHELAMESWAR, J.

Date: 25.04.2006.

M.VENKATESWARA REDDY, J.

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WPMP.NO.11626 of 2006

and

WP No.8519 of 2006

JC,J & MVR,J (Per JC,J)

ON BEING MENTIONED

While disposing of the Writ Petition No.8519 of 2006 on 25.4.2006, in the penultimate paragraph we made certain observations about the officer who passed the impugned order in the writ petition. Hence the present petition.

Heard the learned Government Pleader and the learned counsel for the petitioner.

In the circumstances, we are of the opinion that the office be directed to delete the last two sentences of the penultimate paragraph (extracted hereunder) while issuing a certified copy of the order.

> "……We are of the opinion
>
> ……. This order to the
>
> Chief Secretary."

09.06.2006.

KNK